

REMARKS/ARGUMENTS

Claims 1 and 17 have been amended. Claims 2, 4, 5, 12, 14, and 15 have been deleted. Claims 1, 3, 6 through 11, 13, and 16 through 20 remain in the application. Reexamination and reconsideration of the application are requested in view of applicant arguments.

The examiner has rejected claims 1 and 17 under 35 USC 112 second paragraph as being indefinite. The examiner states that in Claim 1 line 16 recites "the tubular lighter" and should be "the tubular member lighter." Applicant has made this correction. Applicant has also made claim 17 dependant on claim 11. Applicant believes he has overcome examiners rejection.

The examiner has rejected claims 1, 3, 6, 7, 11, 13, 16 and 17 under 35 USC 103(a) as being unpatentable over Franssen in view of Adorjan. The examiner stated that Franssen discloses the elements of Claim 1 however it fails to disclose means for compressing the weights. Adorjan

discloses a means for compressing variable weights in a tubular structure. The examiner goes on to say that it would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the means for compressing weights in a tubular shaft of Adorjan with the Apparatus of Franssen in order to prevent multiple weights from making a noise and distracting the batter. Franssen only has one weight within the tubular member. There would be no reason to use a means for compressing. Thus the combination of Franssen with Adorjan would be improper and claims 1, 3, 6, 7, 11, 13, 16 and 17 would be patentable.

If the examiner wishes to replace single weight of Franssen with the multiple weights and the compression method of Adorjan, the combination is still improper and does not produce all the limitation of the claims. Franssen and Adorjan would not be properly combine because there would be no incentive, teaching or suggestion in either the references to support the combination. Neither Franssen nor Adorjan teach or suggest that the single weight of Franssen should be replaced by the multiple weight of Adorjan. There is clearly no incentive to replace the single weight with the multiple weights and make the system more complicated. Also the combination does not produce a bat as put forth in Claim 1. The weight of Franssen does not extend thought the entire bore only the top half and the

weight is only designed to change the center of gravity. Claim 1 calls for weights that can change the weight of any section of the tubular member heavier or lighter. Thus the weight could be used to make two different section of the tubular member heavier or lighter without changing the center of gravity. Thus claim 1 is patentable over Franssen in view of Adorjan. Claims 3, 6, 7, 11, 13, 16 and 17 are all ultimately dependant upon claim 1 thus the same argument that applies to claim 1 applies to claims 3, 6, 7, 11, 13, 16 and 17, making claims 3, 6, 7, 11, 13, 16 and 17 patentable over Franssen in view of Adorjan.

The examiner has rejected claims 9, 10, 19, and 20 under 35 USC 103(a) as being unpatentable over Franssen in view of Adorjan as applied to the above claims and further in view of official Notice. Official Notice is taken that the use of plastic and aluminum is well known in the art. Applicant would transverse this official notice. Applicant knows of no plastic bats that are on the market that are used to hit actual baseballs or softballs. However, claims 9, 10, 19, and 20 are ultimately dependant on claim 1. Thus the same argument that applies to claim 1 would also apply to claims 9, 10, 19, and 20, making claims 9, 10, 19, and 20 patentable over Franssen in view of Adorjan. The official notice only goes towards the material used to make the bat and not the uses of weighted member and

there position within the bat. Thus claims 9, 10, 19, and 20 are patentable over Franssen in view of Adorjan and the official notice.

The examiner has rejected Claims 1, 3, 6, 7, 11, 13, 16 through 18 under 35 USC 103(a) as being unpatentable over Owen in view of Franssen. The examiner states that Owen discloses all element of claim 1, however it fails to disclose an outer diameter less than the diameter of a conventional bat. Franssen discloses an outer diameter less than the diameter of a conventional bat. The examiner goes no to say the it would be obvious to one of ordinary skill in the art at the time of the invention to have employed the bat diameter of Franssen with the apparatus of Owen in order to permit the training bat to be used by a greater population due to size and weight consideration. Applicant transverses this statement. The object of Owens is to make the bat heavier to build up strength. Thus owns teaches away from examiners reasoning.

Claim 1 has been amended. In claim 1 the words "and nearly fill" are added after within. The word "can be placed" are deleted and replaced with the words "are positional". Basis for this is found in the specifications on page 10, lines 2 through 18 and figure 4. The word "or" has been deleted and replaced with the words "and each individual weight member."

Basis for this is found in the specifications on page 7, lines 3 through 7.

Also the word "weights" has been replaced with the word "weight members" in two places and the word "bat" has been replaced with the words "tubular member". The word member has been placed after the word "tubular".

Claim 1 as it now reads is clearly patentable over Owen in view of Franssen. Examiner states that Owen shows all element of Claim 1 except the small diameter. However, Owen does not show a boar from one end to the other. Also neither Owen nor Franssen shows the weighted members that nearly fill the boar from one end to the other. There is clearly no way in Owen or Franssen to increase the weight of the handle. Thus claim 1 is patentable over Owen in view of Franssen. Claims 3, 6, 7, 11, 13, 16 through 18 are ultimately dependant upon claim 1 thus the same argument that applies to claim 1 also applies to claims 3, 6, 7, 11, 13, 16 through 18. Therefore, claims 3, 6, 7, 11, 13, 16 through 18 are patentable over Owen in view of Franssen.

The examiner states that claim 9, 10, 19, and 20 are rejected under 35 USC 103(a) as being unpatentable over Owen in view of Franssen and official notice as above. As above official notice is of prior art of metal

and plastic bats. As I stated above, applicant knows of no plastic bats that are on the market that are used to hit actual baseballs or softballs. The official notice only goes towards the material used to make the bat and not the uses of weighted member and there position within the bat. Thus claims 9, 10, 19, and 20 are patentable over Franssen in view of Adorjan and the official notice.

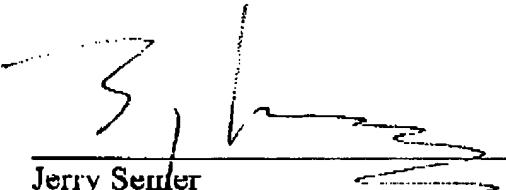
The examiner has made no argument as to claim 8.

The claims are now in condition for allowance. Not one of the patents cited by the examiner show a training bat whose hitting surface is smaller than a conventional bat in which the weight of any section of the bat can be changed to make the bat feel like a conventional bat. There is no prior art that shows a way to vary the weight of the handle.

In view of the above, it is submitted that the claims are in condition for allowance. Reconsideration of the rejection and objections is requested. Allowance of claims 1, 3, 6 through 11, 13, and 16 through 20 at an early

date is solicited.

Respectfully submitted,


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